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HB 965-7

PROCEDURES FOR
PROCESSING PLANT VARIETY PROTECTION APPLICATIONS



EFFECTIVE
JULY 1, 1974

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782

United States
Department of
Agriculture



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I PURPOSE AND SCOPE

These Instructions establish the procedure to be followed by the Plant Variety Protection Office in the administration of the Plant Variety Protection Act and the regulations and rules of practice thereunder. Applicants for plant variety protection certificates can also use this information to help them better understand how to comply with the law and regulations.

II AUTHORITY

The authority for granting certificates of protection for novel varieties is contained in the Plant Variety Protection Act approved December 24, 1970, (84 Stat. 1542-58) (7 U.S.C. 2321-2582) and the regulations and rules of practice of the Secretary of Agriculture (7 CFR Part 180).

III PROCEDURES

A Preliminary Procedures

1 Determination of Eligibility

a Before an application number is assigned and a fee deposited, the appropriate Examiner shall make a preliminary examination of Form GR-470, "Application for Plant Variety Protection Certificate," hereafter referred to as the Application, to find out whether the variety or species is eligible for consideration for a certificate of protection under the Act (Sec. 42 and Sec. 144) by:

(1) Determining that the variety is NOT one of the following:

(a) A hybrid as defined in section 201.2(y) of the regulations under the Federal Seed Act. (Sec. 42)

(b) A species consisting of fungi or bacteria. (Sec. 42)

(c) A species or kind commonly considered to be okra, celery, pepper, tomato, carrot, or cucumber. (Sec. 144)

(2) Determining that, if a foreign address is given, the applicant's country:

(a) Has a breeder's rights law; and

(b) Accepts applications from U.S. nationals for the same genus and species involved in the application in question. If this has not previously been determined, prepare a letter making specific inquiry of the person in charge of the breeder's rights program in the applicant's country before proceeding to file the application as pending. (See appendix A, exhibit C, for the names and addresses of persons in charge of breeder's rights in foreign countries.)

b If the variety is found ineligible, the Office shall:

(1) Inform the applicant immediately, and

(2) Refund the applicant's fee BEFORE it is deposited in the U.S. Treasury.

2 Examination of Information on Application.

(Note: The numbers below coincide with the numbered spaces on the Application.) After the application fee is deposited, the Examiner shall check the Application to determine whether:

1. The variety name or temporary designation is given.

2. The kind name is given.

3. The genus and species name is given.
If not, insert same in red ink.

4. The family name is given. If not, insert same in red ink.

5. The date of determination is given.
If not, have the application amended before search for novelty begins.

6. The name of applicant is given.

7. The applicant's signature shows the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it. If not, request a new signature and title only in conjunction with other correspondence directed to the applicant. (Secs. 180.6(b), 180.13, 180.14, 180.15, 180.16, and 180.17)

8. A complete telephone area code and number is given. If not, request same only in conjunction with other correspondence directed to the applicant.

9. The applicant is indicated to be a corporation. If so, see that items 10 and 11 of the Application are completed also.

10. and 11. See number 9 above.

12. A representative is named. (If so, all future correspondence will be with the representative named and not with the applicant, unless the applicant or the representative requests a change in writing.

13. Exhibits A, B, C, D, and E are attached as separate documents and whether each properly includes the information required for a proper search in accordance with the instructions on the back of the Application. If not, request the applicant to resubmit the exhibits in the proper format. (See appendix A, exhibit A, for an example of proper format.)

14. 14 A is marked as /x/ Yes. If so, check whether 14 B and 14 C are also marked. If 14 A is marked /x/ No, ignore 14 B and 14 C even though marked.

B Office Procedures

1 Secretary or Receiving Clerk. Upon receiving the Application in the Office, the receiving clerk or secretary shall:

a Stamp on the back of the Application the date and time of receipt.

b Complete that part of the form marked "For Official Use Only."

c Prepare appropriate cards for the cross-index card files, identifying the Application by number, applicant, kind, and variety, respectively.

d Place Applications in appropriate file folders numbered in sequence by fiscal years; for example, 7200001, 7200002, 7200003) in the order that Applications are received in the Office.

e Prepare for signature a letter acknowledging receipt of the Application and filing fee. (See appendix A, exhibit B.)

f Prepare a memorandum transmitting the fee (or fees from several applications to the Financial Management Division. (See appendix A, exhibit D.)

2 The Commissioner or Acting Commissioner. Before signing the letters acknowledging receipt of application and forwarding the fee to the Financial Management Division, the Commissioner or Acting Commissioner shall verify that the species is:

a Covered by the Act (see paragraph III A 1 a), and

b Normally sexually-reproduced.

3 The Secretary or Receiving Clerk. If the species is not covered by the Act or is not normally sexually-reproduced, the secretary or receiving clerk shall:

a Return the Application and fee to the applicant.

b Remove from the records the numbered files and card files pertaining to this Application, using the canceled number for another Application.

c File correspondence returning such Applications in a "nonsubject" file in the order of the last dated correspondence on each Application.

4 The Chief Examiner shall assign the Applications for examination to the Examiners.

C Examining Procedures. The Examiner handles each assigned Application through to the final issuance or denial of the certificate, except under exceptional circumstances agreed to by the Commissioner.

1 Reviewing the Application. In examining the Application, determine whether:

a The Application and the exhibits are in the English language and are legibly written, typed, or printed. If not, return the Application and exhibits to the applicant to be resubmitted. (Sec. 180.5(b)(3)(i))

b There are any interlineations, erasures, cancellations, or alterations in the Application or the exhibits that concern pertinent data and that are not clearly initialed and dated by the applicant. If there are, return the document, page, or pages to the applicant for his initials and dating of same. File xerox copies of the page or pages until the originals are returned initialed and dated. (Sec. 180.5(b)(3)(iii))

c All exhibits and parts of an Application received together or separately are accurately and clearly referenced to the Application under examination. (Sec. 180.10) If not, insert an identifying application number on each part.

d The Application is sufficiently complete to permit a search for novelty. If not, it must be completed in accordance with procedures given above. In the first letter, call to the attention of the applicant all possible incomplete or unclear items. The applicant will have 6 months after each letter for completion of action before the Application is considered abandoned. Keep such successive periods for completion to a minimum.

(1) A "tickler" file will be maintained by the appropriate clerk or secretary to inform the Commissioner when 5 months have elapsed without completion of action on the Application, as requested by the Examiner.

(2) At this time a followup letter will be prepared to remind the applicant that if no reply is received within 6 months from the date of the unanswered letter, the Application will be considered abandoned. (Sec. 180.20)

2 Determining Bars To Granting Certificates

a Selling or making available a variety to the public one year prior to application. If information indicates the variety was sold to the public or made available to the public previous to filing the Application with this Office, determine the circumstances and the date. (Sec. 42 of the Act and Secs. 180.7(a)5 and (a)6 of the regulations))

b Filing of application for protection 4 years after applying in foreign country. If an application for protection of the variety was ever filed by the applicant or his privies in a foreign country, determine the date, the country or countries, whether protection was granted, and if so, the date. (Sec. 180.7(b))

3 Requesting Specimens. If the claim for novelty is such that a specimen of the flower, fruit, or seed would clearly demonstrate it novelty, request the specimen with instructions for proper packing to preserve the novelty features of the specimen.

a All specimens received shall be identified by the same number as that assigned to the Application. If more than one type of specimen is submitted, they shall be identified by addition of the letters (a) for the first, (b) for the second, etc., following the application number.

b All plant specimens shall be filed in the library and shall be removed only in accordance with procedures established by the librarian in charge. Unless instructed by the Commissioner to retain certain specimens for an indefinite (or definite) period of time, the librarian shall be responsible after the specimens have served their intended purpose to return them, if such return has been requested by the applicant. The librarian shall burn all specimens that are not returned or retained.

4 Performing Field Inspections. If an applicant requests an Examiner to perform travel to inspect plants in a field in lieu of submitting specimens, the agreement must be approved in accordance with the applicable regulations in AMS Instruction 460.5. (Sec. 180.8(a))

5 Evaluating Drawings and Photographs

a If photographs or drawings have been submitted with an Application, determine whether the photographs or drawings actually disclose the distinctive characteristics of the variety. If not, ignore the photograph or drawing in any determination of novelty. (Sec. 180.9(a))

b If a color photograph has been submitted to demonstrate a color as a distinguishing characteristic, determine whether the color is described by the use of a color chart. If not, request such information from the applicant or his agent. (Sec. 180.9(b))

6 Verifying Filing Date of Application.
If an applicant claims the benefit of the filing date of a prior foreign application, request a certified copy of the foreign application specifying that if the foreign application is not in the English language, an English translation certified as accurate by a sworn or official translator shall be submitted. (Sec. 180.12)

7 Amending Application or Certificate--
Certified Seed Only

a If an applicant desires to amend his pending Application to delete the specification that seed of the variety is to be sold only as certified seed, request the applicant to present a statement that the variety has not been labeled and sold or publication made in any manner that the variety was to be sold by variety name only as a class of certified seed. (Sec. 180.16)
(Publication in the Official Journal would bar a change in the specification unless publication was due to a mistake of the Office.)

b Upon receiving such a statement, amend the Application by deleting such specification.
NOTE: After issuance of a certificate with such a specification, no amendment to, or replacement of, the certificate to delete this specification will be permitted. (Sec. 180.1)
An application or a certificate may be amended to include such a specification at any time upon request of the owner and payment of the appropriate fee. (Sec. 180.103, 180.122)

c Retain in the Office file a copy of all the original papers or documents returned to the applicant for corrections or additions in order to insure against changes being made that were not requested and to insure that if the original documents are lost in the mail information is available.

8 Maintaining Confidentiality

a Pending Applications

(1) All pending application file folders and material belonging therein shall be kept in a locked drawer whenever the room is not occupied. The locked drawer may be in the main file room, library, or in the examiner's office (wherever the file has been charged to by the main file room).

(2) Unless the applicant sends written authority, no one in the Office shall discuss or reveal to anyone outside the Office or Department any information concerning a pending Application, except for:

(a) the number of the Application,

(b) the kind of seed involved, and

(c) the variety name or temporary designation assigned.

NOTE: Exceptions may be made by the Commissioner or Acting Commissioner if he finds that such action is necessary to comply with an Act of Congress or to properly conduct the affairs of the Office. (Sec. 180.18(a))

b Abandoned Applications. With respect to confidentiality, abandoned Applications are treated the same as pending Applications.

c Publication in Official Journal. With respect to each Application, request approval from the applicant to publish in the Official Journal any additional information normally considered as confidential. (See appendix A, exhibit E.) (Sec. 180.19)

9 Evaluating Voluntary Withdrawal or Abandonment of Application

a Bona Fide Attempts to Advance Application.

(1) Applications shall not be considered abandoned if the applicant:

(a) Has made a bona fide attempt to advance his Application, and

(b) Is in substantial compliance with the Examiner's request for action, but has inadvertently failed to comply with some procedural requirement.

(2) An opportunity to comply with procedural requirements shall be given to the applicant before classifying an Application as abandoned. Compliance with procedural requirements may be required in a shortened period, not less than 30 days. (Sec. 180.20)

b Request for an Extension of Time.

Any request for an extension of time to reply to the Office's request for certain action must be filed on or before the specified deadline. The deadline shall be extended by the Commissioner only for good and sufficient cause. Filing a request for extension does not require the granting of the extension. (Sec. 180.21)

c Reinstating Abandoned Application.

An abandoned Application may be revived as a pending Application after receiving:

(1) An applicant's request accompanied by the appropriate fee and a written statement showing:

(a) The reason for not responding to a request by the Office for action, and

(b) A response to the last request for action.

(2) A finding by the Commissioner that the failure to respond was inadvertent or unavoidable and without fraudulent intent. (Sec. 180.22)

d Voluntary Withdrawal of Application

(1) The applicant may voluntarily withdraw or abandon his Application by written request signed by himself or his agent or assignee, if any. (Sec. 180.23(a))

(2) The Office shall return the voluntarily withdrawn Application to the applicant or assignee, if any.

(3) The applicant may revive a voluntary abandonment within 3 months thereafter by:

(a) Paying the prescribed fee, and

(b) Showing that abandonment occurred without fraudulent intent. (Sec. 180.23(b))

D Miscellaneous Procedures

1 Recording Assignments. The appropriate clerk or secretary shall:

a Record in the appropriate pending application file, certificate file, or in the "Assignment Record" file used for recording assignments in the order in which they are received in the Office, any evidence received in the Office from the owner of record concerning:

(1) an assignment of an Application or certificate, or

(2) any part interest in a variety, or

(3) a license or grant of an exclusive right to a variety.

b Not accept or record evidence of assignments that do not bear the signature of the owner as the assignor. (Secs. 180.130, 131, 132)

c After an assignment has been recorded on a pending Application, request permission from the assignee to publish the change of ownership in the Official Journal in the same manner as shown in paragraph III C 9. (See appendix A, exhibit M.)

2 Representation for Applicant

a In any pending Application or proceeding, only attorneys or agents specified by the applicant shall be allowed to inspect papers or to take action of any kind on behalf of an applicant.

b All correspondence between the Office and the applicant shall be only through the designated attorney or agent, if any. (Sec. 180.151, 152, 153)

c No officer or employee of the United States may represent an applicant in any proceeding involving the Plant Variety Protection Act, unless his official duties require the preparation and prosecution of the applications for certificates of protection for Government agencies. (See 180.154)

3 Fees and Charges

a Before any substantial man-hours are spent on processing an Application, the Examiner shall determine that the necessary fees and charges have been paid in advance and duly recorded on the form stapled inside the cover of the file folder, unless the services to be performed are not specifically prescribed. (Secs. 180.175, 176, 177, 178, and 179)

b If services are not specifically prescribed, no work chargeable on a reimbursable basis shall be performed until the applicant specifically requests the desired service in writing.

4 Availability of Office Records. Upon approval by the Commissioner, the public may examine records that are open to them, in the Office during regular business hours. (See secs. 56 and 57 of the Act and secs. 180.18 and 19 of the regulations.)

5 Novelty Search Procedures. (See Regulatory Handbook 965-8)

E Allowance of Certificate

1 Notice of Allowance

a If, upon completion of the search procedure in D-5, the applicant appears to be entitled to a certificate of protection, the Examiner shall prepare a Notice of Allowance (see appendix A, exhibit H) for review and approval by the Chief Examiner and for signature of the Commissioner.

b The appropriate clerk or secretary shall prepare a "tickler file."

c If 3 months elapse from the date of the Notice of Allowance without a reply, the clerk or secretary

shall prepare a letter for signature of the Commissioner indicating that the Application will be considered "abandoned," unless the fee for delayed payment and the requested original fee and sample of viable seed are submitted within 9 months thereafter. (See appendix A, exhibit I.) (Sec. 180.101)

d Amendments to an Application may be made at any time up to the issuance of a certificate; provided, the amendment does not affect the Examiner's decision on allowance after a notice of allowance has been issued. (Sec. 180.102)

e When all of the requirements have been met by the applicant, one of the two certificates of protection (see appendix A, exhibits J and K) shall be prepared, as applicable, with a covering letter signed by the Commissioner and mailed by certified mail to the owner or to his attorney or agent, if any. (Sec. 180.103)

f Copies of the covering letter applicable to "Certified Seed Only" certificates shall be sent to the Secretaries of the American Seed Trade Association, Association of American Seed Control Officials, and Association of Official Seed Certifying Agencies, and to the Seed Branch.

g If a replenishment of the basic viable seed sample of the novel variety is requested by the National Seed Storage Laboratory, Agricultural Research Service, Ft. Collins, Colorado, the Examiner shall request a new viable seed sample from the owner of the certificate. (See appendix A, exhibit L.) Upon receipt of the sample, the librarian shall package and mail it to the National Seed Storage Laboratory.

(1) If no sample is received within 3 months, the Examiner shall prepare a letter for the Commissioner's signature notifying the owner that the Certificate will be considered "abandoned" unless the sample is submitted to the Office.

(2) The Examiner shall publish the "abandonment" in the next issue of the Official Journal, unless for good cause the Commissioner allows the owner an extension of time to comply.

h When the Office has been notified in writing that a Certificate has been voluntarily abandoned,

the Examiner shall schedule a Notice of Abandonment for publication in the next issue of the Official Journal.
(Sec. 180.104(d))

F Denial of Certificate

1 If the Examiner denies a certificate for lack of novelty, he shall prepare a letter for the Commissioner's signature citing, as precisely as possible, the reasons the Application is denied, including the citation of prior certificates, publications, and descriptions upon which he relied. (Sec. 180.105)

2 If an applicant requests in writing a reconsideration, specifically pointing out alleged errors in the Examiner's decision, the Examiner shall, after reexamining each allegation and consulting with the Chief Examiner:

a Institute an allowance procedure; or

b Prepare a final denial letter for the Commissioner's signature in the same manner as he prepared the original denial. (Sec. 180.106 and 107)

G Correction of Errors in Certificate

1 If a Certificate has been issued with an error or errors due to a mistake in the Office, the Examiner shall request the original Certificate be returned for correction or reissuance. (Unless a correction can be made without defacing or detracting from its appearance, issue a new certificate at no cost to the owner.) (Sec. 180.120)

2 If a Certificate has been issued and the applicant desires a correction or reissuance because of an error on his part or because of a variety name change, the Examiner shall proceed as follows:

1 If a further examination is not required, correct or reissue the Certificate as in paragraph G 1 above, after payment of the specified fee.

2 If the requested correction requires a reexamination; the correction or reissuance and the fee charged shall depend upon the extent and results of the reexamination. (Sec. 180.121 and 180.122)

FORM GR-470
(12-15-72)UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782FORM APPROVED
OMB NO. 40-R3712

EXHIBIT A

APPLICATION FOR PLANT VARIETY PROTECTION CERTIFICATE

(SAMPLE)

INSTRUCTIONS: See Reverse.

1. VARIETY NAME OR TEMPORARY DESIGNATION SIOUX	2. KIND NAME Barley	FOR OFFICIAL USE ONLY PV NUMBER	
3. GENUS AND SPECIES NAME Hordeum vulgare	4. FAMILY NAME (Botanical) Gramineae	FILING DATE	TIME A. M. P. M.
	5. DATE OF DETERMINATION January 15, 1972	FEE RECEIVED \$ \$ \$	BALANCE DUE \$ \$ \$
6. NAME OF APPLICANT(S) Smith and Sons	7. ADDRESS (Street and No. or R.F.D. No., City, State, and ZIP Code) 1142 Kenwood Ave. Grand, North Dakota 24562		8. TELEPHONE AREA CODE AND NUMBER 701-242-1542
9. IF THE NAMED APPLICANT IS NOT A PERSON, FORM OF ORGANIZATION: (Corporation, partnership, association, etc.) Corporation	10. STATE OF INCORPORATION Delaware	11. DATE OF INCORPORATION 1899	

12. Name and mailing address of applicant representative(s), if any, to serve in this application and receive all papers:

Dr. John Doe
Smith and Sons
1142 Kenwood Avenue
Grand, North Dakota 24562

13. CHECK BOX BELOW FOR EACH ATTACHMENT SUBMITTED:

- ☒ 13A. Exhibit A, Origin and Breeding History of the Variety (See Section 52 of the Plant Variety Protection Act.)
- ☒ 13B. Exhibit B, Botanical Description of the Variety
- ☐ 13C. Exhibit C, Objective Description of the Variety
- ☒ 13D. Exhibit D, Data Indicative of Novelty
- ☒ 13E. Exhibit E, Statement of the Basis of Applicant's Ownership

14A. Does the applicant(s) specify that seed of this variety be sold by variety name only as a class of certified seed? (See Section 83(a). (If "Yes," answer 14B and 14C below.) ☒ YES ☐ NO

14B. Does the applicant(s) specify that this variety be limited as to number of generations? ☒ YES ☐ NO

14C. If "Yes," to 14B, how many generations of production beyond breeder seed? ☒ FOUNDATION ☒ REGISTERED ☒ CERTIFIED

The applicant declares that a viable sample of basic seed of this variety will be deposited upon request before issuance of a certificate and will be replenished periodically in accordance with such regulations as may be applicable.

The undersigned applicant(s) of this sexually-reproduced novel plant variety believes that the variety is distinct, uniform, and stable as required in Section 41 and is entitled to protection under the provisions of Section 42 of the Plant Variety Protection Act.

Applicant is informed that false representation herein can jeopardize protection and result in penalties.

(DATE)

(Signature and Title)

(SIGNATURE OF APPLICANT)_____
(DATE)_____
(SIGNATURE OF APPLICANT)

SAMPLEEXHIBIT A

Origin and Breeding History of the Variety

1. Sioux originated in North Dakota from a hand-pollinated cross between 'Valhalla' and 'Walsh' and a backcross to 'Valhalla.' The crosses were completed in 1965. The breeding history and description of the parents may be found in Technical Bulletin No. 1224 U.S.D.A., "Classification of Barley Varieties Grown in United States and Canada in 1958."
2. Pure line selections were made based on maturity and straw strength in F_5 in Mexico and F_6 in North Dakota in 1966-68. Yield tests were made at seven locations in the Pacific Northwest and five locations in the Midwest for 3 years. (See data attached.)
3. Due to the parentage of this variety, rouging of a dark blue head type is required. The frequency of this off-type is one plant out of 4,000.

The genetic makeup of the variety was stabilized in the fifth generation. The attached data from our field reports indicates a homogenous variety for the past four generations.

SAMPLEEXHIBIT B

Botanical Description of the Variety

'Sioux' is a tall type, two row, midseason spring barley and is similar in plant characteristics to 'Valhalla' but is more vigorous and somewhat more decumbent in seedling stage when grown in Walsh County, North Dakota, in 1980.

The stem is stiff and erect; basal leaf sheaths without hairs, green or faintly purple; upper leaf sheaths waxy, yellow or sometimes slightly black at maturity; auricles rarely purple streaked; leaves long, wide, wider than 'Valhalla' upright; flagleaf short, wide, sometimes curled, resembles the parent 'Walsh'; stem between the flagleaf and collar yellow or sometimes slightly black at maturity; exposed nodes green; exertion not over 11 cm.; collar closed, seldom open; basal rachis internode curved, 2-5 mm. long; rachis tough with few to many long hairs on edge, similar to 'Valhalla'; spikes lax, midlong, parallel, slightly waxy, slightly nodding; lateral kernels overlap in upper fourth of the spike; lemma awns long; awns smooth, tips purple, rarely deciduous; glume awns equal to the length of the glumes, rough; glumes half the length of the lemma, with long hairs confined to wide bands or occasionally covering the glumes; rachilla long haired, occasionally abortive; lemma yellow, nerves faintly purple, few to several teeth on lateral nerves and none or few on marginal nerves, with depression at base tending to crease; stigma moderately hairy similar to 'Valhalla'; hull slightly wrinkled to stigma moderately hairy similar to 'Valhalla'; hull slightly wrinkled to semiwrinkled; kernel white, colorless aleurone, 27 to a gram.

'Sioux' has a strong straw and is resistant to stem rust. It is susceptible to leaf rust, loose and covered smut, and very susceptible to leaf blotch.

FORM GR-470-5
(11-1-72)UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
GRAIN DIVISION
HYATTSVILLE, MARYLAND 20782

FORM APPROVED. OMB NO. 40-R3712

EXHIBIT C
(Barley)OBJECTIVE DESCRIPTION OF VARIETY
BARLEY (*HORDEUM VULGARE*)

INSTRUCTIONS: See Reverse.

NAME OF APPLICANT(S)

ADDRESS (Street and No. or R.F.D. No., City, State, and ZIP Code)

FOR OFFICIAL USE ONLY

PVPO NUMBER

VARIETY NAME OR TEMPORARY
DESIGNATION

Place the appropriate number that describes the varietal character of this variety in the boxes below.

Place a zero in first box (i.e., or) when number is either 99 or less or 9 or less.

1. GROWTH HABIT:

☐ 1 = SPRING 2 = FACULTATIVE WINTER 3 = WINTER ☐ Early Growth: 1 = PROSTRATE 2 = SEMIPROSTRATE
3 = ERECT

2. MATURITY (50% Flowering):

☐ 1 = EARLY (California Mariout) 2 = MIDSEASON (Betzes) 3 = LATE (Frontier)

☐ No. of days Earlier than } 1 = BETZES 2 = CALIFORNIA MARIOUT 3 = CONQUEST 4 = DICKSON

☐ No. of days Later than } 5 = PIROLINE 6 = PRIMUS 7 = UNITAN

3. PLANT HEIGHT (From soil level to top of head):

☐ 1 = SEMIDWARF 2 = SHORT (California Mariout) 3 = MEDIUM TALL (Betzes) 4 = TALL (Conquest)

 Cm. Shorter than } 1 = BETZES 2 = CALIFORNIA MARIOUT 3 = CONQUEST 4 = DICKSON

 Cm. Taller than } 5 = PIROLINE 6 = PRIMUS 7 = UNITAN

4. STEM:

☐ Exertion (Flag to spike at maturity): 1 = 0 - 3 cm. 2 = 3 - 10 cm. 3 = 10 - 15 cm. ☐ Anthocyanin: 1 = ABSENT 2 = PRESENT

 NO. OF NODES (Originating from node above ground)

☐ Collar Shape: 1 = CLOSED 2 = V-SHAPED 3 = OPEN 4 = MODIFIED CLOSED OR OPEN ☐ Shape of Neck: 1 = STRAIGHT 2 = SNAKY
3 = OTHER (Specify) _____

5. LEAF:

☐ Basal leaf sheath (seedling): 1 = GLABROUS 2 = PUBESCENT ☐ Position of flag leaf (at boot stage): 1 = DROOPING
2 = UPRIGHT

☐ Waxiness: 1 = ABSENT (Glossy) 2 = SLIGHTLY WAXY 3 = WAXY MM. WIDTH (First leaf below flag leaf)

 CM. LENGTH (First leaf below flag leaf) ☐ Anthocyanin in leaf sheath: 1 = ABSENT 2 = PRESENT

6. HEAD:

☐ Type: 1 = TWO-ROWED 2 = SIX-ROWED ☐ Density: 1 = LAX 2 = ERECT (Not dense)
3 = ERECT (Dense)

☐ Shape: 1 = TAPERING 2 = STRAP 3 = CLAVATE ☐ Waxiness: 1 = ABSENT (Glossy) 2 = SLIGHTLY WAXY
4 = OTHER (Specify) _____ 3 = WAXY

☐ Lateral Kernels Overlap: 1 = NONE 2 = AT TIP ☐ Rachis (Hair on edge): 1 = LACKING 2 = FEW 3 = COVERED
3 = 1/4 - 1/2 OF HEAD

7. GLUME:

☐ Length: 1 = 1/3 OF LEMMA 2 = 1/2 OF LEMMA ☐ Hairs: 1 = NONE 2 = SHORT 3 = LONG
3 = MORE THAN 1/2 OF LEMMA

☐ Hair covering: 1 = NONE 2 = RESTRICTED TO MIDDLE 3 = CONFINED TO BAND 4 = COMPLETELY COVERED

☐ Awns: 1 = LESS THAN EQUAL TO LENGTH OF GLUMES 2 = EQUAL TO LENGTH OF GLUMES
3 = MORE THAN EQUAL TO LENGTH OF GLUMES

☐ Awn Surface: 1 = SMOOTH 2 = SEMISMOOTH 3 = ROUGH

FORM GR-470-5 (Reverse)

8. LEMMA:

☐ Awn: 1 = AWNLESS 2 = AWNLETS ON CENTRAL ROWS, AWNLESS ON LATERAL ROWS
 3 = SHORT ON CENTRAL ROWS, AWNLETS ON LATERAL ROWS 4 = SHORT (less than equal to length of spike)
 5 = LONG (longer than spike) 6 = HOODED

☐ Awn Surface: 0 = AWNLESS 1 = SMOOTH 2 = SEMISMOOTH 3 = ROUGH

☐ Teeth: 1 = ABSENT 2 = FEW 3 = NUMEROUS ☐ Hair: 1 = ABSENT 2 = PRESENT

☐ Shape of base: 1 = DEPRESSION 2 = SLIGHT CREASE ☐ Rachilla Hairs: 1 = SHORT 2 = LONG
 3 = TRANSVERSE CREASE

9. STIGMA:

☐ Hairs: 1 = FEW 2 = MANY

10. SEED:

☐ Type: 1 = NAKED 2 = COVERED ☐ Hairs on Ventral Furrow: 1 = ABSENT 2 = PRESENT

☐ Length: 1 = SHORT (8.0 mm.) 2 = SHORT TO MIDLONG (7.5 - 9.0 mm.) 3 = MIDLONG (8.5 - 9.5 mm.)
 4 = MIDLONG TO LONG (9.0 - 10.5 mm.) 5 = LONG (10.0 mm.)

☐ Wrinkling of hull: 1 = NAKED 2 = SLIGHTLY WRINKLED 3 = SEMIWRINKLED 4 = WRINKLED

☐ Aleurone Color: 1 = COLORLESS (White or Yellow) 2 = BLUE

☐ PERCENT ABORTIVE ☐ GMS. PER 1000 SEEDS

11. DISEASE: (0 = Not Tested, 1 = Susceptible, 2 = Resistant)

☐ SEPTORIA ☐ NET BLOTCH ☐ SPOT BLOTCH ☐ POWDERY MILDEW

☐ LOOSE SMUT ☐ BACTERIAL BLIGHT ☐ COVERED SMUT ☐ FALSE LOOSE SMUT

☐ STEM RUST ☐ LEAF RUST ☐ SCAB ☐ SCALD

☐ AY ☐ BSMV ☐ BYDV ☐ OTHER (Specify)

12. INSECT: (0 = Not tested, 1 = Susceptible 2 = Resistant)

☐ GREEN BUG ☐ ENGLISH GRAIN APHID ☐ CHINCH BUG ☐ ARMYWORM

☐ GRASS HOPPERS ☐ CERIAL LEAF BETTLE ☐ OTHER (Specify)

HESSIAN FLY RACES } ☐ GP ☐ A ☐ B ☐ C
☐ D ☐ E ☐ F ☐ G

13. CHEMICAL (0 = Not Tested, 1 = Susceptible, 2 = Resistant)

☐ DDT ☐ OTHER (Specify)

14. INDICATE WHICH VARIETY MOST CLOSELY RESEMBLES THAT SUBMITTED:

CHARACTER	NAME OF VARIETY	CHARACTER	NAME OF VARIETY
Plant tillering		Seed size	
Leaf size		Coleoptile elongation	
Leaf color		Seedling pigmentation	
Leaf carriage			

REFERENCES: The following publications may be used as a reference aid for the standardization of character descriptions and terms used in this form:

1. Wiebe, G. A., and D. A. Reid, 1961, Classification of Barley Varieties Grown in the United States and Canada in 1958, Technical Bulletin No. 1224, U.S. Dept. of Agriculture.
2. Reid, D. A., and G. A. Wiebe, 1968, Barley: Origin, Botany, Culture, Winter Hardiness, Genetics, Utilization, Pests, Agriculture Handbook No. 338, U.S. Dept. of Agriculture. pp. 61 - 84.
3. Malting Barley Improvement Association, Milwaukee, Wisconsin, 1971, Barley Variety Dictionary.

COLOR: Nickerson's or any recognized color fan may be used to determine color of the described variety.

EXHIBIT D

Data Indicative of Novelty

Novelty is based on the unique combination of the following characters:

'Sioux' most closely resembles 'Walsh,' except it has (1) purple colored awn tip, (2) it is resistant to stem rust and susceptible to covered smut, (3) 'Sioux' is an average of 4 inches taller, is more erect, and has a stiffer straw than 'Walsh.'

SAMPLEEXHIBIT EStatement of Applicant's Ownership

Smith and Sons, Grand, North Dakota, believes it is the sole, original and first breeder of the 'Sioux' variety of barley for which it solicits a certificate of protection.

UPOV NAMES AND ADDRESSES

Professor H. Esbo
Chairman, National Plant Variety
Board, State Seed Testing Station
171 73 Solna, Sweden

Mr. B. Laclaviere
Administrateur Civil
Ministere de l'Agriculture
3 Rue Barbet de Jouy
75007 Paris, France

Dr. D. Boringer
Präsident, Bundessortenamt
Rathausplatz 1
3011 Bemerode/Hanover
Federal Republic of Germany

Mr. J. I. C. Butler
Chairman, Board for
Plant Breeders' Rights
Postbus 104
Wageningen, The Netherlands

Mr. H.A.S. Doughty
Controller, Plant Variety
Rights Office
White House Lane
Huntingdon Road
Cambridge, England

Mr. E. Sondergaard
Chairman, Plant Variety Board
Rolighedsvej 26
1958 Copenhagen V.
Denmark



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Dr. A. B. Murgatroyd
Learmon Seed Company
9876 Rotcod Street
Featherton, Indiana 12345

Dear Dr. Murgatroyd:

We have received your check for \$250 and your application
for Plant Variety Protection on the following variety:

Application No. 7400001 Soybean Throckmorton

Sincerely,

Commissioner, Plant Variety
Protection Office
Grain Division



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Plant Variety Protection
Application No. 7400001

To: Financial Management Division, AMS
Collection Unit
Hyattsville, Maryland

Deposit to Miscellaneous Receipts the following Plant
Variety Protection Act application check:

Learmon Seed Company
Featherton, IN 12345

Check No. 67890 \$250

Commissioner, Plant Variety
Protection Office
Grain Division

Enclosure

Received

Name

Date



965-7

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Publication of Pending Application - Application No.

Section 180.19 of 7 CFR 180, Regulations and Rules of Practice Under the Plant Variety Protection Act, provides that certain information relating to pending applications may be published only upon request or approval of the applicant.

Do you agree to publication of the following information concerning your application identified above:

- (1) The name and address of the applicant. ☐ Yes ☐ No
- (2) A brief description of the novel features of the variety. ☐ Yes ☐ No
- (3) That the variety is to be sold by variety name only as a class of certified seed. ☐ Yes ☐ No
If answer is affirmative, check the classes permitted beyond breeder seed.
☐ Foundation
☐ Registered
☐ Certified

Please date, sign, and enter your official capacity:

(DATE)

(SIGNATURE)

(OFFICIAL CAPACITY)

An addressed envelope which requires no postage is enclosed for your convenience in returning this signed authorization. An extra copy of the authorization is enclosed for your records.

Commissioner
Plant Variety Protection Office
Grain Division

Enclosures
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965-7

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Fee for Search or Examination
Application No.

We are now prepared to search the records to determine whether a plant variety protection certificate should be issued for the application identified above.

The fee for a search or examination is \$250, payable in advance in accordance with sections 180.175-177 of 7 CFR 180, Regulations and Rules of Practice Under the Plant Variety Protection Act, sent to you earlier.

Please send your remittance directly to this office.

Commissioner
Plant Variety Protection Office
Grain Division

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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Possible Misleading Variety Name

To: Seed Branch, Grain Division, AMS

A pending application in the Plant Variety Protection Office indicates that the name ' ' is to be assigned to a variety of

We would appreciate your advice as to whether this name may be considered misleading under the Federal Seed Act for the following reason(s):

Commissioner
Plant Variety Protection Office
Grain Division



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Fee for Allowance and Issuance of Certificate
Application No.

We have completed our search of the records and have determined that a certificate of plant variety protection may be issued for the application identified above.

The fee for the certificate is \$250, payable within 3 months of the date of this letter (see sections 180.101-103 and 180.175-177 of 7 CFR 180, Regulations and Rules of Practice Under the Plant Variety Protection Act, sent to you earlier). Please send your remittance directly to this office.

In addition to the fee, please submit to this office at least 2,500 viable seeds of the basic seed required to reproduce the novel variety. Send the seeds in a solidly packed, sealed container clearly identified as to application number, name of variety, and name of applicant. If the seed is not received within 3 months of the date of this letter, your application will be considered abandoned (see 7 CFR 180.101(b)).

Please enter below the name(s) in which the certificate should be issued and whether or not the certificate should indicate that the variety shall be sold by variety name only as a class of certified seed (see 7 CFR 180.103).

Issue certificate to: _____

Specify that variety shall be sold by variety name only as a class of certified seed: ☐ Yes ☐ No

(DATE)

(SIGNATURE)

(OFFICIAL CAPACITY)

Please return this letter with your remittance. An extra copy is enclosed for your records.

Commissioner
Plant Variety Protection Office
Grain Division

Enclosure



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Abandonment of Application No.
Our Letter Dated

This Office has received no response from you to our previous letter.

In accordance with section 180.20 of the regulations and rules of practice under the Plant Variety Protection Act, if you do not respond to our original request within 6 months, the application shall be considered abandoned.

If you desire an extension of time for reply, please refer to section 180.21 of the rules.

You should also refer to sections 180.22 and 180.23 dealing with abandoned applications.

Sincerely,

Commissioner
Plant Variety Protection Office
Grain Division

No.

EXHIBIT



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Whereas, THERE HAS BEEN PRESENTED TO THE
Secretary of Agriculture

AN APPLICATION REQUESTING A CERTIFICATE OF PROTECTION FOR AN ALLEGED NOVEL VARIETY OF SEXUALLY REPRODUCED PLANT, THE NAME AND DESCRIPTION OF WHICH ARE CONTAINED IN THE APPLICATION AND EXHIBITS, A COPY OF WHICH IS HEREUNTO ANNEXED AND MADE A PART HEREOF, AND THE VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED HAVE BEEN COMPLIED WITH, AND THE TITLE THERETO IS, FROM THE RECORDS OF THE PLANT VARIETY PROTECTION OFFICE, IN THE APPLICANT(S) INDICATED IN THE SAID COPY, AND WHEREAS, UPON DUE EXAMINATION MADE, THE SAID APPLICANT(S) IS (ARE) ADJUDGED TO BE ENTITLED TO A CERTIFICATE OF PLANT VARIETY PROTECTION UNDER THE LAW.

NOW, THEREFORE, THIS CERTIFICATE OF PLANT VARIETY PROTECTION IS TO GRANT UNTO THE SAID APPLICANT(S) AND THE SUCCESSORS, HEIRS OR ASSIGNS OF THE SAID APPLICANT(S) FOR THE TERM OF _____ YEARS FROM THE DATE OF THIS GRANT, SUBJECT TO THE PAYMENT OF THE REQUIRED FEES AND PERIODIC REPLENISHMENT OF VIABLE BASIC SEED OF THE VARIETY IN A PUBLIC REPOSITORY AS PROVIDED BY LAW, THE RIGHT TO EXCLUDE OTHERS FROM SELLING THE VARIETY, OR OFFERING IT FOR SALE, OR REPRODUCING IT, OR IMPORTING IT, OR EXPORTING IT, OR USING IT IN PRODUCING A HYBRID OR DIFFERENT VARIETY THEREFROM, TO THE EXTENT PROVIDED BY THE PLANT VARIETY PROTECTION ACT. IN THE UNITED STATES SEED OF THIS VARIETY (1) SHALL BE SOLD BY VARIETY NAME ONLY AS A CLASS OF CERTIFIED SEED AND (2) SHALL CONFORM TO THE NUMBER OF GENERATIONS SPECIFIED BY THE OWNER OF THE RIGHTS. (84 STAT. 1542, AS AMENDED, 7 U.S.C. 2321 ET SEQ.)

[SEAL]

Attest:

*Commissioner
 Plant Variety Protection Office
 Grain Division
 Agricultural Marketing Service*

*In Testimony Whereof, I have hereunto set
 my hand and caused the seal of the Plant
 Variety Protection Office to be affixed
 at the City of _____
 this _____ day of _____ in
 the year of our Lord one thousand nine
 hundred and _____*

Secretary of Agriculture

No.

EXHIBIT K



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

**Whereas, THERE HAS BEEN PRESENTED TO THE
Secretary of Agriculture**

AN APPLICATION REQUESTING A CERTIFICATE OF PROTECTION FOR AN ALLEGED NOVEL VARIETY OF SEXUALLY REPRODUCED PLANT, THE NAME AND DESCRIPTION OF WHICH ARE CONTAINED IN THE APPLICATION AND EXHIBITS, A COPY OF WHICH IS HEREUNTO ANNEXED AND MADE A PART HEREOF, AND THE VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED HAVE BEEN COMPLIED WITH, AND THE TITLE THERETO IS, FROM THE RECORDS OF THE PLANT VARIETY PROTECTION OFFICE, IN THE APPLICANT(S) INDICATED IN THE SAID COPY, AND WHEREAS, UPON DUE EXAMINATION MADE, THE SAID APPLICANT(S) IS (ARE) ADJUDGED TO BE ENTITLED TO A CERTIFICATE OF PLANT VARIETY PROTECTION UNDER THE LAW.

NOW, THEREFORE, THIS CERTIFICATE OF PLANT VARIETY PROTECTION IS TO GRANT UNTO THE SAID APPLICANT(S) AND THE SUCCESSORS, HEIRS OR ASSIGNS OF THE SAID APPLICANT(S) FOR THE TERM OF _____ YEARS FROM THE DATE OF THIS GRANT, SUBJECT TO THE PAYMENT OF THE REQUIRED FEES AND PERIODIC REPLENISHMENT OF VIABLE BASIC SEED OF THE VARIETY IN A PUBLIC REPOSITORY AS PROVIDED BY LAW, THE RIGHT TO EXCLUDE OTHERS FROM SELLING THE VARIETY, OR OFFERING IT FOR SALE, OR REPRODUCING IT, OR IMPORTING IT, OR EXPORTING IT, OR USING IT IN PRODUCING A HYBRID OR DIFFERENT VARIETY THEREFROM, TO THE EXTENT PROVIDED BY THE PLANT VARIETY PROTECTION ACT (84 STAT. 1542, AS AMENDED, 7 U.S.C. 232 ET SEQ.)

[SEAL]

Attest:

*Commissioner
Plant Variety Protection Office
Grain Division
Agricultural Marketing Service*

*In Testimony Whereof, I have hereunto set
my hand and caused the seal of the Plant
Variety Protection Office to be affixed
at the City of _____
this _____ day of _____ in
the year of our Lord one thousand nine
hundred and _____*

Secretary of Agriculture



UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
6525 BELCREST ROAD
HYATTSVILLE, MARYLAND 20782

Subject: Replenishment of Sample - Certificate No.

Sections 52(3) and 83(c) of the Plant Variety Protection Act and sections 180.104(b) and (c) of the regulations and rules of practice thereunder provide for replenishment by the owner of a protected variety of the viable basic seed sample of the variety stored in the public repository.

A new sample is hereby requested in accordance with the attached instructions.

Please indicated by placing an "X" in the appropriate block below whether the remaining portion of the previous sample now in storage should be returned to you.

☐ Yes

☐ No

If your answer is "No," the sample will be destroyed.

Return one copy of this letter with your new sample and keep one copy for your records.

Sincerely,

Commissioner
Plant Variety Protection Office
Grain Division

Attachment

NATIONAL AGRICULTURAL LIBRARY



1023025431